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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON THE SELECTION PROCESS FOR AND OPERATION OF THE REIMBURSEMENT CLEARINGHOUSE FOR THE 3.45 GHZ BAND

WT Docket No. 19-348

Comments Due: [[15 days from Federal Register publication]] Reply Comments Due: [[25 days from Federal Register publication]]

With this Public Notice, the Wireless Telecommunications Bureau (Bureau) seeks comment on the appropriate industry stakeholders to form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary, non-federal radiolocation licensees in the 3.45-3.55 GHz band (3.45 GHz band). The Bureau also seeks comment on other issues related to the Clearinghouse search committee process.¹

In the 3.45 GHz Band Second R&O, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States.² To facilitate this goal, the Commission previously had determined that secondary, non-federal radiolocation licensees in the band would be relocated to the 2.9-3.0 GHz band.³ In the 3.45 GHz Band Second R&O, the Commission further determined that secondary, non-federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band.⁴ In addition, the Commission required "new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those operations to the 2.9-3.0 GHz band, including the costs of a relocation clearinghouse's administration of the reimbursement."⁵ Specifically, each new 3.45 GHz Service licensee "will be responsible for reimbursement of a pro rata

¹ Given the limited scope of issues on which we seek comment here, we find a 15- and 25-day comment cycle appropriate in this instance.

² Facilitating Shared Use in the 3100-3550 MHz Band, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987 (2021) (3.45 GHz Band Second R&O).

³ Facilitating Shared Use in the 3100-3550 MHz Band, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Red 11078, 11086, para. 20 (2020) (3.45 GHz Band R&O and FNPRM).

⁴ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6041, para. 152; see also 47 CFR § 2.106 n. US103.

⁵ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6042, para. 155. The Commission "anticipate[d] clearinghouse costs to be minimal, given the limited number of licensees being relocated and relatively small estimated cost of their transition. The radiolocation service incumbents will initially fund the clearinghouse and can request reimbursement from new flexible-use licensees for the clearinghouse costs." *Id.* at 6042, para. 155, n. 386.

share of reasonable relocation costs of non-federal radiolocation operations."6

The Commission in the 3.45 GHz Band Second R&O delegated authority to the Bureau, working in coordination with the Office of the Managing Director, to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding.⁷ Consistent with that delegation, the Bureau now seeks comment on the appropriate industry stakeholders to be included in the search committee for a 3.45 GHz band Clearinghouse. As in the 3.7 GHz proceeding, the Commission in the 3.45 GHz Band Second R&O provided for the creation of a neutral, independent clearinghouse to oversee the collection and distribution of relocation reimbursement payments from new 3.45 GHz Service licensees to non-federal secondary radiolocation incumbents.⁸ Unlike in the 3.7 GHz context, however, in the 3.45 GHz proceeding, the Commission did not identify the specific industry stakeholders who would compose the search committee to select the Clearinghouse.⁹

In the 3.7 GHz proceeding, the Commission determined that the clearinghouse search committee would be composed of nine members appointed by nine entities that the Commission found, collectively, reasonably represented the interests of the stakeholders in the 3.7 GHz band transition. These entities represented incumbents in the band (space station operators—three entities, and earth station operators—three entities) and prospective flexible-use licensees (three entities). The Commission determined that the range of entities it had chosen would fairly represent the broad interests of the relevant stakeholders in the 3.7 GHz band transition. The Commission directed the search committee to proceed by consensus, but noted that if a vote on the selection of a clearinghouse was required, it would be by a majority vote.

As in the 3.7 GHz proceeding, we expect that an effective 3.45 GHz Clearinghouse search committee should be composed of a mix of entities representing incumbent and prospective licensee interests. We seek comment on which industry stakeholders should be included in the 3.45 GHz Clearinghouse search committee. We note that in this proceeding, incumbents are two broadcasters—NBCUniversal and Nexstar—operating weather radar systems in the band. Are incumbent interests sufficiently aligned such that one entity can represent both incumbents? Regarding prospective licensee interests, we anticipate Auction 110 for 3.45 GHz Service licenses to attract a variety of participants.¹⁴

⁶ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6044, para. 161. As the Commission explained, "the total relocation costs will be divided by the number of 3.45 GHz Service licenses and each licensee will be required to pay their share based on the number of licenses they hold." *Id.*; see also 47 CFR § 27.1604.

⁷ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6045, para. 163. This delegation of authority includes "the authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement our decision here and, if necessary for the purposes of the more limited relocation here, to adjust the procedures adopted in that proceeding to tailor them to the relocation in this proceeding." *Id.*

⁸ Compare Expanding Flexible Use in the 3.7-4.2 GHz Band, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343, 2446, para. 255 (2020) (3.7 GHz Band R&O) and 47 CFR § 27.1414 with 3.45 GHz Band Second R&O, 36 FCC Rcd at 6045, para. 163 and 47 CFR § 27.1605.

⁹ See 3.7 GHz Band R&O, 35 FCC Rcd at 2450-51, paras. 273-75.

¹⁰ Id. at 2450-51, para. 274; 27 CFR § 27.1414(a)(1).

¹¹ 3.7 GHz Band R&O, 35 FCC Rcd at 2450-51, para. 274.

¹² Id. at 2450-51, para. 274.

¹³ *Id.*; 27 CFR § 27.1414(a)(1).

¹⁴ See Auction of Flexible-use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Status of Short-Form Applications to Participate in Auction 110, AU Docket No. 21-62, Public Notice, DA 21-99 (rel. Aug. 18, 2021) (identifying 42 short-form applications received for Auction 110).

Who should represent these prospective licensee interests on the search committee? Should it be one or more individual service providers, one or more industry associations? Are industry associations better positioned to serve as Clearinghouse participants than individual service providers, particularly in advance of known auction winners? Should we take a different approach, such as combining categories of stakeholders? Given that each licensee, regardless of size or location, must pay a *pro rata* share of the relocation costs, is there a need for separate representation of small and rural businesses and if so, on what basis? Are there any other entities that should be included in the search committee?

We also seek comment on the optimal number of members to include on the search committee. As noted above, the 3.7 GHz search committee was composed of nine members. As the Commission noted, compared to the 3.7 GHz band transition, however, the incumbent relocation in the 3.45 GHz band presents a less complex and costly process, with only two incumbents to be relocated at an estimated cost of \$3.1 million.¹⁵ In light of the relatively simpler relocation process involved here, is a nine-member search committee warranted or necessary? Would a smaller committee size suffice and perhaps be more efficient here? For example, would it be sufficient to have three members here—one representing the relocating incumbents, one representing the wireless industry, and one representing other prospective bidders in the band? If not, what other interests or combinations of interests should be included?

Consistent with the 3.7 GHz proceeding, we propose that after the Bureau releases a public notice announcing the entities that will comprise the search committee, each selected search committee entity would nominate one individual to serve on the search committee. We seek comment on this proposal and any alternatives. Further, as in the 3.7 GHz proceeding, we propose that the search committee would proceed by consensus, but if a vote on the selection of a clearinghouse is required, it would be by a majority vote. We also propose that the search committee be composed of an odd number of representatives to prevent deadlock. We seek comment on these proposals.

In the 3.7 GHz proceeding, the Commission directed the search committee to notify the Commission of the detailed selection criteria for the position of clearinghouse, "consistent with the qualifications, roles, and duties of the Clearinghouse." The Commission also asked the search committee to "ensure that the Clearinghouse meets relevant best practices and standards in its operation to ensure an effective and efficient transition." Consistent with this requirement, the 3.7 GHz band search committee submitted to the Commission a Request for Proposal that detailed the selection criteria and instructions for filing proposals for the 3.7 GHz band clearinghouse. We propose that the search committee in the 3.45 GHz Service also submit to the Bureau detailed selection criteria for the role of Clearinghouse; such selection criteria must be consistent with the 3.45 GHz Band Second R&O and the Commission's rules. Should the Bureau include more specific requirements for the search committee's

¹⁵ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6042, para. 155, n. 386, 6043, para. 157. NBCUniversal estimates that it will cost \$2.16 million to relocate all four of its radar systems, inclusive of equipment and labor. Nexstar estimates about \$1 million for its systems' relocation. *Id.* In contrast, the record in the 3.7 GHz proceeding contained estimates of the total clearing cost ranging from about \$3 billion to about \$6 billion. *See 3.7 GHz Band R&O*, 35 FCC Rcd at 2428-29, para. 206.

¹⁶ See 3.7 GHz Band R&O, 35 FCC Rcd at 2450-51, para. 274.

¹⁷ *Id.* at 2451, para. 275.

¹⁸ *Id.*; 27 CFR § 27.1414(a)(2).

¹⁹ Wireless Telecommunications Bureau Announces Relation Payment Clearinghouse Request for Proposal Selection Criteria, and Application Deadlines in the 3.7-4.2 GHz Band Transition, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 5768 (WTB 2020).

²⁰ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6044-45, paras. 160-65; 27 CFR § 27.1605.

selection criteria? If so, what selection criteria are appropriate here? Further, should the search committee provide copies of the proposals or applications submitted to it by the potential Clearinghouse applicants? What oversight role by the Bureau is appropriate to ensure proper performance of the search committee and ultimately the entity that is selected as the Clearinghouse? We seek comment on these issues.

We note that, in the 3.7 GHz proceeding, the Commission instructed the search committee to impose a series of specific requirements on the Clearinghouse's work in administering the transition,²¹ but the Commission did not impose those requirements for this transition. The comparatively smaller size and lower level of complexity of the 3.45 GHz transition may mean imposing similar requirements on the 3.45 GHz Clearinghouse is unnecessary. We seek comment on whether we should direct the search committee to require the Clearinghouse to fulfill some or all of these requirements. Are there alternate requirements we should direct the search committee to require? To what extent should the Bureau supervise the compliance with any such requirements?

In addition, we seek comment on the necessity of the search committee releasing a formal Request for Proposal here or whether a less formal selection process may be appropriate for the relocation process anticipated in the 3.45 GHz band. We seek comment on any alternative proposals for the search committee to select the Clearinghouse, as long as any such alternatives are consistent with 3.45 GHz Band Second R&O and related rules. We also seek comment on any other ways in which to tailor the Clearinghouse search committee process to the unique circumstances of the 3.45 GHz band.

Finally, we note that the Commission's Prohibited Communications rules are in effect for this proceeding, ²² and remind interested parties to be mindful of these rules when speaking publicly about this proceeding, including through the filing of comments in response to this notice.

Supplemental Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²³ the Bureau has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Public Notice to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *3.45 GHz Band R&O and FNPRM* and *3.45 GHz Second R&O*.²⁴ Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same

²¹ 3.7 GHz Band R&O, 35 FCC Rcd at 2451, para. 276 ("The Clearinghouse should be required, in administering the transition, to (1) engage in strategic planning and adopt goals and metrics to evaluate its performance, (2) adopt internal controls for its operations, (3) use enterprise risk management practices, and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. The Clearinghouse must be required to create written procedures for its operations, using the Government Accountability Office's (GAO) Green Book to serve as a guide in satisfying such requirements.").

²² 47 CFR § 1.2105(c) (prohibition of certain communications). See also Auction of Flexible Use Licenses in the 3.45–3.55 GHz Band For Next Generation Wireless Services; Notice and Filing Requirement, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 110; Bidding in Auction 110 Scheduled to Begin October 5, 2021, AU Docket No. 21-62, Public Notice, FCC 21-655, at 17-23, paras. 43-68, Section II.G (Prohibited Communications and Compliance with Antitrust Laws) (rel. June 9, 2021).

²³ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996).

²⁴ See 3.45 GHz Band R&O and FNPRM, 35 FCC Rcd at Appendix B; 3.7 GHz Band R&O, 35 FCC Rcd at Appendix B.

deadline for comments specified on the first page of this Public Notice. The Commission will send a copy of this Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁵ In addition, this Public Notice and Supplemental IRFA (or summaries thereof) will be published in the *Federal Register*.²⁶

Need for, and Objectives of, the Proposed Rules. This Public Notice initiates the process for selection by interested stakeholders of the 3.45 GHz Relocation Clearinghouse (Clearinghouse). The Clearinghouse was created by the Commission in the 3.45 GHz Second R&O to reimburse secondary, non-federal radiolocation users for their reasonable relocation expenses for moving below the 3.0 GHz band. The Commission also delegated authority to the Bureau to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding.²⁷ Through the comment sought in the Public Notice, the Bureau will develop a more specific implementation of that process. Specifically, through public comment the Bureau seeks to determine the specific industry stakeholders and the number of members that will make up the search committee, how the search committee process would operate (by consensus or majority vote), whether the search committee must provide information to the Bureau regarding the selection criteria for the position of clearinghouse, whether the search committee should be required to impose specific requirements on the work of the Clearinghouse, and whether an RFP or some other less formal approach should be used by the search committee to select the Clearinghouse.

Legal Basis. The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in sections 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's proposed action is authorized pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, 310, 316, of the Communications Act of 1934, as amended, as well as the Commercial Spectrum Enhancement Act, Pub. L. 108-494, 118 Stat. 3986 (Dec. 23, 2004) as amended, and the MOBILE NOW Act, Pub. L. 115-141, 132 Stat. 1098, Div. P, Title VI, § 603 (Mar. 23, 2018), 47 U.S.C. §§ 151, 154(i), 157, 301, 303, 307, 308, 309, 310, 316, 923(g), and 928 and 1502, and by the Beat China by Harnessing Important, National Airwaves for 5G Act of 2020, Pub. L. 116-260, Division FF, Title IX, Sec. 905.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.²⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." ²⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁰ A "small

²⁵ See 5 U.S.C. § 603(a).

²⁶ See id.

²⁷ 3.45 GHz Band Second R&O, 36 FCC Rcd at 6045, para. 163. This delegation of authority includes "the authority to seek notice and comment on the parameters of additional considerations that should inform the creation and administration of the cost-sharing plan to help implement our decision here and, if necessary for the purposes of the more limited relocation here, to adjust the procedures adopted in that proceeding to tailor them to the relocation in this proceeding." *Id.*

²⁸ 5 U.S.C. § 603(b)(3).

²⁹ 5 U.S.C. § 601(6).

³⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity (continued....)

business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³¹

As noted above, Regulatory Flexibility Analyses were incorporated in the 3.45 GHz R&O and FNPRM and the 3.45 GHz Second R&O. In those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this Public Notice, for the Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities. We do not expect that participation in the Clearinghouse search committee or selection process will require small entities to hire attorneys, engineers, consultants, or other professionals. Those entities that seek to serve, and are ultimately selected to serve, on the Clearinghouse selection committee may face reporting, recordkeeping, and/or other compliances requirements, relating to their work as a member of the search committee not as a licensee of the 3.45 GHz band. For example, in the Public Notice, the Bureau seeks comment on what selection criteria the search committee should be required to follow in selecting a Clearinghouse, and what oversight, if any, the Bureau might have of this process (which could potentially include, for example, reports by the selection committee to the Bureau).

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities:"

The Commission has taken steps that should minimize any economic impact on small entities. As an initial matter, we note that no small entity is required to participate in the Clearinghouse selection process. We also note that in the Public Notice the Bureau specifically seeks comment on whether or how small entities' interests should/could best be represented on the selection committee, given that all new flexible-use licensees, regardless of size, will have to pay a pro-rata share of non-federal incumbents' reasonable relocation expenses. Before reaching any final conclusions and taking any final actions however, the Bureau expects to review the comments filed in response to the Public Notice and more fully consider how the interests of small entities can best be represented on the search committee.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules. None.

Paperwork Reduction Act Analysis. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, has invited the general public and the OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA).³³ These information collection requirements, together with any public comments, will be submitted to OMB for

³¹ 15 U.S.C. § 632.

³² 5 U.S.C. § 603(c)(1)-(4).

³³ 86 FR 32263 (June 17, 2021).

review under the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,³⁴ we have sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Deadlines and Filing Procedures. Interested parties may file comments or reply comments on or before the dates indicated on the first page of this document in WT Docket No. 19-348. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³⁵ We strongly encourage interested parties to file comments electronically.

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS at www.fcc.gov/ecfs.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to this Public Notice may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Until further notice, the FCC no longer accepts hand-delivered or messenger-delivered paper filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁶
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats (braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex* parte rules.³⁷ Persons making oral *ex parte* presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them

³⁴ 44 U.S.C. § 3506(c)(4).

³⁵ See generally Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

³⁶ FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing, Public Notice, 35 FCC Rcd 2788 (OMD 2020). After COVID-19 restrictions are lifted, the new filing location for hand-carried filings will be 9050 Junction Drive, Annapolis Junction, MD 20701. See FCC Announces Closing of Filing Window at FCC Headquarters and Permanent Change in the Location and Hours for Receiving Hand-Carried Filings. Public Notice (OMD July 7, 2020).

³⁷ See 47 CFR §§ 1.1200(a), 1.1206.

in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information regarding this Public Notice, please contact Joyce Jones, Wireless Telecommunications Bureau, at joyce.jones@fcc.gov or 202-418-1327.

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